

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF VIRGINIA
3 Charlottesville Division

4 UNITED STATES OF AMERICA, Criminal No. 3:7cr00019

6 Vs. Charlottesville, Virginia

7 KELVIN SMITH and
8 HAMPTON SMITH,

9 Defendants. October 15, 2007

10 TRANSCRIPT OF GUILTY PLEA PROCEEDINGS
11 BEFORE THE HONORABLE NORMAN K. MOON,
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the United States: U.S. Attorney's Office
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Charlottesville, VA 22902

17 For Deft. Kelvin Smith: Tucker Griffin Barnes
18 DANA SLATER, ESQ.
19 307 W. Rio Rd.
Charlottesville, VA 22901

20 For Deft. Hampton Smith: LINDSAY G. DORRIER, JR., ESQ.
21 P.O. Box 818
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22 Court Reporter: Sonia Ferris, RPR
23 U.S. Court Reporter
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Charlottesville, VA 22902
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25 Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 THE COURT: Call the case.

2 THE CLERK: Yes, Your Honor.

3 This is Criminal Action No. 3:07cr19, United
4 States of America vs. Kelvin Smith and Hampton Smith.

5 THE COURT: Are both defendants ready? Are
6 you ready?

7 MS. SLATER: Thank you, Judge; yes.

8 THE COURT: Are you ready?

9 MR. DORRIER: Yes, Your Honor.

10 THE COURT: Government ready?

11 MS. HEALEY: Yes, Your Honor.

12 THE COURT: Would Mr. Hampton Smith stand
13 first, please?

14 State your full name, please, sir.

15 THE DEFENDANT: Hampton Lamar Smith.

16 THE COURT: And the date of your birth?

17 THE DEFENDANT: 6/7/84.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: Eleventh grade.

20 THE COURT: Are you able to read and
21 understand English?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you currently or have you
24 recently been under the care of a physician or
25 psychiatrist?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you been hospitalized or
3 treated for narcotic addiction?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you presently under the
6 influence of any drug or medication or alcoholic
7 beverage of any kind?

8 THE DEFENDANT: No, sir.

9 THE COURT: How do you feel physically
10 today?

11 THE DEFENDANT: Healthy.

12 THE COURT: Have you received a copy of the
13 indictment?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you had ample time to
16 consult with your attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you want the indictment read
19 or will you waive it's reading?

20 THE DEFENDANT: Waive it.

21 THE COURT: How do you plead to the charge?

22 THE DEFENDANT: Guilty.

23 THE COURT: You may a seat and I'll ask Mr.
24 Kelvin Smith to stand.

25 Mr. Smith, would you state your full name,

1 please?

2 THE DEFENDANT: Kelvin Jerome Smith.

3 THE COURT: And the date of your birth?

4 THE DEFENDANT: 12/10/84.

5 THE COURT: How far did you go in school?

6 THE DEFENDANT: To the tenth.

7 THE COURT: Are you able to read and
8 understand English?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Are you currently or have you
11 recently been under the care of a physician or a
12 psychiatrist?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Have you been hospitalized or
15 treated for narcotic addiction?

16 THE DEFENDANT: No.

17 THE COURT: Are you presently under the
18 influence of any drug or medication or alcoholic
19 beverage of any kind?

20 THE DEFENDANT: No.

21 THE COURT: How do you feel today,
22 physically?

23 THE DEFENDANT: Feel all right.

24 THE COURT: Have you received a copy of the
25 indictment?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you had ample time to
3 consult with your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you want the indictment read
6 or will you waive it's reading?

7 THE DEFENDANT: I'll waive it.

8 THE COURT: How do you plead to the charge?

9 THE DEFENDANT: Guilty.

10 THE COURT: I'll ask both defendants now to
11 stand.

12 I'm going to ask you questions now and I
13 need both of you to answer questions loud enough for me
14 and the Court Reporter to hear your answer. Don't nod
15 answers, so that we can hear.

16 First, I find that each defendant is
17 competent to plead. Before accepting your guilty plea,
18 there are a number of questions which I will ask you to
19 assure that your plea is valid. If you do not
20 understand any of the questions or if at any time you
21 wish to consult with your attorney, please say so
22 because it is essential that you understand each
23 question before you answer.

24 First, do you understand you are now under
25 oath and if you answer any of my questions falsely, your

1 answers may later be used against you in another
2 prosecution for perjury or making a false statement?

3 DEFENDANT HAMPTON SMITH: Yes, sir.

4 DEFENDANT KELVIN SMITH: Yes, sir.

5 THE COURT: Are you fully satisfied with the
6 counsel, representation and advice given you in this
7 case by your attorney?

8 DEFENDANT HAMPTON SMITH: Yes, sir.

9 DEFENDANT KELVIN SMITH: Yes, sir.

10 THE COURT: Do you understand that under the
11 Constitution and laws of the United States, you are
12 entitled to a trial by a jury on the charges contained
13 in the indictment?

14 DEFENDANT HAMPTON SMITH: Yes, sir.

15 DEFENDANT KELVIN SMITH: Yes, sir.

16 THE COURT: Do you understand at that trial,
17 you would be presumed to be innocent and the government
18 would be required to prove you guilty by competent
19 evidence and beyond a reasonable doubt before you could
20 be found guilty and you would not have to prove you were
21 innocent?

22 DEFENDANT HAMPTON SMITH: Yes, sir.

23 DEFENDANT KELVIN SMITH: Yes, sir.

24 THE COURT: Do you understand that in the
25 course of the trial, the witnesses for the government

1 would have to come to court and testify in your presence
2 and your counsel could cross-examine the witnesses for
3 the government, object to evidence offered by the
4 government and offer evidence on your behalf?

5 DEFENDANT HAMPTON SMITH: Yes, sir.

6 DEFENDANT KELVIN SMITH: Yes, sir.

7 THE COURT: Do you understand also at trial,
8 you would have the right to testify if you chose to do
9 so, but you would also have the right not to testify and
10 no inference or suggestion of guilt could be drawn from
11 the fact you did not testify?

12 DEFENDANT HAMPTON SMITH: Yes, sir.

13 DEFENDANT KELVIN SMITH: Yes, sir.

14 THE COURT: If you plead guilty and I accept
15 your plea, do you understand you will waive your right
16 to a trial and the other rights I've just discussed and
17 there will be no trial? I will enter a judgment of
18 guilty and sentence you on the basis of your guilty plea
19 after considering a pre-sentence report.

20 DEFENDANT HAMPTON SMITH: Yes, sir.

21 DEFENDANT KELVIN SMITH: Yes, sir.

22 THE COURT: If you plead guilty, do you
23 understand you will waive -- strike that.

24 Do you still want to plead guilty?

25 DEFENDANT HAMPTON SMITH: Yes.

1 DEFENDANT KELVIN SMITH: Yes.

2 THE COURT: Each of you have received a copy
3 of the indictment. Have you discussed with your
4 attorney the charges in the indictment to which you
5 intend to plead guilty?

6 DEFENDANT HAMPTON SMITH: Yes, sir.

7 DEFENDANT KELVIN SMITH: Yes, sir.

8 THE COURT: Do you understand each charge?

9 DEFENDANT HAMPTON SMITH: Yes, sir.

10 DEFENDANT KELVIN SMITH: Yes, sir.

11 THE COURT: Ms. Healey, would you summarize
12 the elements the government is required to prove and
13 also state the punishment provided by law in each count?

14 MS. HEALEY: Yes, Your Honor.

15 Mr. Hampton Smith is only pleading guilty to
16 Count Four, one of the distribution counts, but I'll
17 just go in order of the way they appear in the
18 indictment.

19 Count One charges conspiracy.

20 I'm reading the counts Mr. Kelvin Smith will
21 be pleading guilty to.

22 Count One charges a conspiracy. That
23 requires as follows: First, that we show there's an
24 agreement between two or more people to violate federal
25 drug laws, here to distribute and possess with intent to

1 distribute quantities of cocaine base, cocaine powder
2 and marijuana. Secondly, the defendant knowingly joined
3 this agreement or conspiracy. Thirdly, that in this
4 particular conspiracy, that the conspiracy involved at
5 least five grams or -- five grams or more of cocaine
6 base; and finally, that the conspiracy occurred, at
7 least in part, in the Western District of Virginia.

8 The next count, Count Two, charges Mr.
9 Kelvin Smith with making a false statement required by
10 law to be kept in the records of a federal firearms
11 licensee. That requires as follows: First, that the
12 defendant knowingly made a false statement or
13 representation; secondly, that the false statement or
14 representation was with respect to information that was
15 required by Chapter 44 of Title 18 United States Code to
16 be kept in the records of a federally licensed firearms
17 dealer; and thirdly, that this occurred, at least in
18 part, in the Western District of Virginia.

19 Count Five charges Kelvin Smith with being a
20 drug user in possession of a firearm. We'd have to
21 show, first, that the defendant knowingly possessed a
22 firearm; secondly, that at the time, the defendant was
23 an unlawful user of a controlled substance; third, that
24 the gun at some point travelled interstate, such as
25 being manufactured outside the Commonwealth of Virginia;

1 and finally, that this occurred, at least in part, in
2 the Western District of Virginia.

3 Counts Four and Six charge Kelvin Smith.
4 Count Four also charges Hampton Smith and that's the
5 charge to which he's pleading guilty. Kelvin, I
6 believe, is pleading to Count Six, but they're the same
7 thing, distribution of cocaine.

8 We'd have to show, first, that the defendant
9 knowingly distributed cocaine; and secondly, that this
10 occurred, at least in part, in the Western District of
11 Virginia.

12 Count Seven, to which Kelvin Smith is
13 pleading to, essentially a lesser included -- I'm not
14 sure if it's technically a lesser included -- it charges
15 Kelvin Smith with using or carrying a firearm during and
16 in relation to a drug trafficking crime or possessing
17 such firearm in furtherance of such drug trafficking
18 crime.

19 In terms of the lesser included, he's
20 charged in Count Seven with both brandishing and
21 discharging a firearm during that incident. He's
22 pleading to the discharging during that particular
23 incident. Because of that, he faces a mandatory minimum
24 of seven years consecutive to any other sentence that he
25 serves and looking at up to life imprisonment without

1 the possibility of parole on that particular charge; and
2 a \$250,000 fine.

3 The elements for that in this case, that
4 one, the defendant knowingly used or carried a firearm
5 during and in relation to a drug trafficking crime or
6 knowingly possessed a firearm in furtherance of a drug
7 trafficking crime; secondly, the defendant in this case
8 brandished the firearm during the incident; and finally,
9 this occurred, at least in part, in the Western District
10 of Virginia.

11 THE COURT: Do each of you understand then
12 what the government would have to prove beyond a
13 reasonable doubt before you could be found guilty?

14 DEFENDANT HAMPTON SMITH: Yes.

15 DEFENDANT KELVIN SMITH: Yes.

16 THE COURT: Do each of you understand the
17 range of punishment provided by law in each case?

18 DEFENDANT HAMPTON SMITH: Yes, sir.

19 DEFENDANT KELVIN SMITH: Yes, sir.

20 THE COURT: You understand that the offenses
21 to which you're pleading guilty are felony offenses and
22 that if your plea is accepted, you will be adjudged
23 guilty of such offenses and such adjudication may
24 deprive you of valuable civil rights, such as the right
25 to vote, the right to hold public office, the right to

1 serve on a jury and the right to possess any kind of
2 firearm?

3 DEFENDANT HAMPTON SMITH: Yes, sir.

4 DEFENDANT KELVIN SMITH: Yes, sir.

5 THE COURT: Do you understand that
6 generally, a sentence of probation will not be
7 available -- any of these cases where someone might get
8 probation? If it's under 20 years -- there's no
9 mandatory minimums anyway.

10 MS. HEALEY: With respect to Hampton Smith,
11 he's just pleading to a single count of simple
12 possession. I guess it's theoretically possible.

13 THE COURT: Understand, generally, you don't
14 get straight probation in these cases. Do you
15 understand?

16 DEFENDANT HAMPTON SMITH: Yes, sir.

17 DEFENDANT KELVIN SMITH: Yes, sir.

18 THE COURT: Do you understand that the Court
19 can impose a special assessment of \$100 for each felony
20 count?

21 DEFENDANT HAMPTON SMITH: Yes, sir.

22 DEFENDANT KELVIN SMITH: Yes, sir.

23 THE COURT: Have you and your attorney
24 talked about how the Sentencing Commission advisory
25 guidelines might apply to your case?

1 DEFENDANT HAMPTON SMITH: Yes, sir.

2 DEFENDANT KELVIN SMITH: Yes, sir.

3 THE COURT: Do you understand the Court will
4 not be able to determine the sentence for your case
5 until after a pre-sentence report has been completed and
6 you and the government have had an opportunity to
7 challenge the facts reported by the probation officer?

8 DEFENDANT HAMPTON SMITH: Yes, sir.

9 DEFENDANT KELVIN SMITH: Yes, sir.

10 THE COURT: Do you also understand that
11 after it's been determined what advisory guideline
12 applies to a case, the judge has the authority to impose
13 a sentence that is more severe or less severe than that
14 called for by the guidelines?

15 DEFENDANT HAMPTON SMITH: Yes, sir.

16 DEFENDANT KELVIN SMITH: Yes, sir.

17 THE COURT: Do you understand that under
18 some circumstances, you or the government may have the
19 right to appeal any sentence that I impose?

20 DEFENDANT HAMPTON SMITH: Yes, sir.

21 DEFENDANT KELVIN SMITH: Yes, sir.

22 THE COURT: Do you understand that parole
23 has been abolished and if you're sentenced to prison,
24 you will not be released on parole?

25 DEFENDANT HAMPTON SMITH: Yes, sir.

1 DEFENDANT KELVIN SMITH: Yes, sir.

2 THE COURT: Do you understand that if the
3 sentence is more severe than you expect, you will still
4 be bound by your plea and will have no right to withdraw
5 it?

6 DEFENDANT HAMPTON SMITH: Yes, sir.

7 DEFENDANT KELVIN SMITH: Yes, sir.

8 THE COURT: Mr. Dorrier, will you just
9 summarize the essential elements of your client's plea
10 agreement?

11 MR. DORRIER: Your Honor, the plea agreement
12 states basically that Hampton Smith takes
13 responsibilities for his actions, that is, admits that
14 he, on the date in question, that he distributed
15 cocaine; that he was relative with his co-defendant,
16 Ricus Smith and Kelvin Smith; that he admits that he did
17 the act; and he's basically pleading guilty because he,
18 in fact, is guilty; that he seeks -- I don't know
19 whether you want me to get into substantial assistance,
20 Your Honor. I don't know whether it's proper.

21 THE COURT: I understand that's in there.
22 Really, what I just want publically to add are those
23 things sort of detrimental to him, be sure he's not
24 expecting something that's not in there or that he's in
25 some way going to be --

1 MR. DORRIER: He's been in jail since July.

2 THE DEFENDANT: May.

3 MR. DORRIER: Excuse me, May.

4 He basically states what's in the plea
5 agreement. We've gone over it page by page, paragraph by
6 paragraph. We've read every word of it. He's initialed
7 every page. I feel he knows what it contains and what
8 the terms are. He's pleading guilty to one felony, one
9 charge and --

10 THE COURT: Does he waive his right to
11 appeal guideline issues?

12 MR. DORRIER: Guidelines would apply, Your
13 Honor.

14 We saw there was a range of sentence from 12
15 to 18 months.

16 THE COURT: But he's waiving any right to
17 appeal those issues.

18 MR. DORRIER: That's correct, Your Honor.
19 He's waiving any rights to appeal.

20 THE COURT: He's waiving the right to
21 collaterally attack.

22 MR. DORRIER: Yes, Your Honor.

23 His record is, he's had one prior offense,
24 pleaded guilty in state court to possession of a gun.

25 THE DEFENDANT: Misdemeanor.

1 MR. DORRIER: Misdemeanor, concealment.

2 That's his only record.

3 THE COURT: Ms. Healey, anything you would
4 add?

5 MS. HEALEY: Mr. Dorrier is correct. It's
6 fairly simple. He's pleading to one count. We'll
7 dismiss the other counts at the appropriate time. We
8 agree to recommend that he be held responsible for less
9 than 25 grams of cocaine. He gets credit for acceptance
10 of responsibility if he accepts responsibility. There's
11 the standard provision about proffer evidence. He is
12 waiving his right to appeal a sentence and to
13 collaterally attack the judgment. He's also waiving the
14 statute of limitations if for some reason the plea
15 agreement was put aside and there's a provision for
16 substantial assistance which has been referenced.

17 I did want to state, too, all the charges I
18 indicated before, they all carry terms of supervised
19 release as well, which I should have mentioned.

20 That's essentially the provisions, Your
21 Honor.

22 THE COURT: Hampton Smith, you heard your
23 attorney and Ms. Healey speak of the plea agreement. Did
24 they say anything about it that's different from the way
25 you understood it to be?

1 THE DEFENDANT: No, sir.

2 THE COURT: Did you read and understand it
3 before you signed it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did anyone make any other
6 promise or assurance to you of any kind in an effort to
7 induce you to enter a plea of guilty in the case?

8 THE DEFENDANT: No, sir.

9 THE COURT: Anyone try to force you to plead
10 guilty?

11 THE DEFENDANT: No, sir.

12 THE COURT: And you understand you're
13 specifically giving up -- you're voluntarily giving up
14 your right to appeal the sentence in the case and you're
15 voluntarily giving up your right to file a writ of
16 habeas corpus and actions like that, after verdict?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You may have a seat now.

19 I'll ask Mr. Kelvin Smith to stand.

20 Ms. Slater, would you summarize his
21 agreement?

22 MS. SLATER: Yes, Judge, I shall.

23 Mr. Kelvin Smith, in accordance with the
24 plea agreement, is pleading guilty to Count One, Two,
25 Five, Six and Seven. In exchange, any other counts that

1 are applied to him will be -- will not be prosecuted.
2 Count Seven was originally charged as a
3 924(c)(1)(A)(iii), but the government has amended that
4 to 924(c)(1)(A)(ii), which carries a minimum mandatory
5 of seven years.

6 Mr. Smith is aware, by pleading, all of his
7 rights to trial and witnesses are not open to him; that
8 the guidelines apply.

9 In paragraph four, it states that he is
10 agreeing that a base offense level of 32 in the
11 guidelines does apply, though it's a matter to be
12 determined by the Court and he may disregard the
13 stipulation and fix the drug weight at a higher or lower
14 amount. But the role in his offense is left up to the
15 pre-sentence report whether there's aggravating or
16 mitigating. He understands that as far as Counts -- for
17 his role in the offense.

18 The guidelines, the government will be
19 asking the Court to go to the mid range of the
20 guidelines. He understands that.

21 He understands that if there are any issues
22 with representation that he's to notify the Court prior
23 to sentencing and that otherwise, he waives his right to
24 challenge that and outside the bounds of some sort of
25 unconstitutional recommendation from the judge for

1 sentencing, he also waives his attack on the sentencing.

2 As far as the denial of federal benefits,
3 that has been explained.

4 The waiver of statute of limitations, if it
5 comes up, that's been explained.

6 Anything dealing with any sort of, if there
7 is any sort of substantial assistance, has been
8 explained to him and the remedies for the breach of the
9 plea, what the government can do, has been explained to
10 him in that the government can withdraw out of the plea
11 and all that's pretty much standard, starting at square
12 one.

13 Everything else is fairly -- those are the
14 highlights, Judge.

15 THE COURT: Anything you would add, Ms.
16 Healey?

17 MS. HEALEY: I will add that he also waived
18 his right to collaterally attack the judgment. I know
19 there was a statement about him waiving his right to
20 appeal the sentence and guidelines stuff, but it's also
21 in the collateral attack.

22 The plea agreement also makes clear if he
23 accepts responsibility, he's looking at a two-point
24 decrease. I have not put in the language of the three
25 points, given the other benefits we have put in that are

1 beneficial to the defendant in this case.

2 (Counsel conferred).

3 Role in the offense, Your Honor, he does
4 agree his base offense should be increased by two
5 levels, based on his role in the offense. I knew there
6 was something in there.

7 Those are the relevant provisions, Your
8 Honor.

9 THE COURT: Ms. Slater, do you agree with
10 her remarks?

11 MS. SLATER: May I just have a moment?

12 (Counsel conferred).

13 Yes, Judge.

14 THE COURT: Mr. Smith, you've heard your
15 attorney and Ms. Healey speak of your plea agreement.
16 Did they say anything about it different from the way
17 you understood it to be?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Did you read and understand it
20 before you signed it?

21 THE DEFENDANT: Yes, I did.

22 THE COURT: Do you realize you're
23 voluntarily giving up your right to appeal the sentence
24 in the case and to collaterally attack the judgment in
25 the case?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand -- first of
3 all, did anyone make any other promise or assurance to
4 you of any kind in an effort to induce you to plead
5 guilty?

6 THE DEFENDANT: No.

7 THE COURT: You understand you're giving up
8 your right -- excuse me. There's something else.

9 Has anyone attempted in any way to force you
10 to plead guilty?

11 THE DEFENDANT: No.

12 THE COURT: You may a seat and I'll ask Ms.
13 Healey to either summarize her evidence or call a
14 witness.

15 MS. HEALEY: Yes, Your Honor.

16 This particular case, investigators learned
17 that these two defendants, along with Kelvin Smith's
18 brother, Ricus, were involved in dealing various drugs
19 in the Keswick area, as well as other areas of Albemarle
20 County or Charlottesville area. Although the witnesses
21 indicate that Kelvin dealt on sort of a larger scale,
22 had a larger role, they learned also that Ricus and
23 Hampton Smith also dealt as well.

24 The time period stated in the indictment is
25 that it is -- the conspiracy spanned back as early as

1 2005 and continued at least until December, 2006. But
2 witnesses have indicated that some of the defendants or
3 the defendants were using drugs well before then and
4 that drugs were sold by one or more of them well before
5 2005.

6 Witnesses have stated that cocaine powder,
7 marijuana and crack cocaine or cocaine base were all
8 sold.

9 Historical testimony would show that Kelvin
10 Smith would be responsible for greater than five grams
11 of crack and also substantial amounts of cocaine base
12 powder.

13 These defendants were also known, according
14 to various witnesses, to carry guns. Witnesses stated
15 in particular, Kelvin Smith frequently carried a
16 firearm.

17 On May 4, 2006, which is one of the counts,
18 Kelvin Smith went to purchase a Keltech 9mm Luger Model
19 P-11 pistol, serial number, A6D36, at a federally
20 licensed firearms dealer, known as High Tech Outdoors
21 and Archery, located in the Pantops shopping mall, in
22 Albemarle County. On the form that he was required to
23 complete for that firearms transaction, he falsely
24 stated that he was not an unlawful user of a controlled
25 substance. He knows that all the defendants in this case

1 were essentially using powder cocaine and marijuana.

2 On August -- in August, 2006, there were two
3 controlled buys made by an informant, in Albemarle
4 County. The August 9, 2006, transaction in the
5 indictment involved both Kelvin Smith and Hampton Smith.
6 This is the count that Hampton Smith, of course, is
7 pleading guilty to. The deal was set up between Kelvin
8 Smith and the informant, but Hampton Smith did the
9 actual hand-to-hand exchange. He actually got in the
10 car with the informant and did the hand-to-hand change.

11 On August 11, 2006, this was the deal that
12 involved only Kelvin Smith. During the second deal,
13 Kelvin Smith showed up in a silver Kia rental car. What
14 investigators learned was that a girlfriend of Kelvin
15 Smith's had rented this particular vehicle. When the
16 vehicle was returned to Enterprise rental car in
17 Albemarle County a few days later, the Keltech 9mm
18 pistol he had purchased back in May of 2006 was
19 recovered from within that vehicle.

20 The rental office -- interestingly, the
21 rental office for the Enterprise rental car was actually
22 next to the firearms shop where he bought the firearm a
23 few months earlier than that.

24 On November 24, 2006, Ricus and Kelvin Smith
25 shot another man during essentially a drug deal gone

1 bad. Although witnesses have described this event
2 somewhat differently, most of them indicate the incident
3 occurred this way. That night, the victim was riding
4 with a couple other people in the car. He was not the
5 driver. There was a woman driving the car. They were
6 looking to buy some cocaine powder. They stopped near
7 one home in Keswick. Ricus Smith eventually got into
8 the car. The woman who was driving drove the car over
9 to Ricus and Kelvin's mother's house on Black Cat Road,
10 in Keswick. The victim provided money to Ricus Smith and
11 most of the witnesses have said that Kelvin was going to
12 make the sale. There's some question whether Ricus was
13 going to make the sale.

14 The victim at some point thought he was
15 getting ripped off, in part because Kelvin Smith was
16 apparently taking too long and also because he believed
17 he was getting shorted in the transaction. He thought it
18 was too small an amount of drugs. The victim, who was
19 unarmed, got into an altercation or argument with Ricus
20 and Kelvin, which became physical at some point. Kelvin
21 Smith was the first to take out a gun. Kelvin Smith and
22 the victim at some point struggled over the gun and at
23 some point, a round was discharged from Kelvin Smith's
24 gun, which is believed to be a 9mm pistol.

25 The clip from Kelvin's gun was apparently

1 ejected during this particular transaction. Ricus Smith
2 thereafter takes out his gun and fires two shots into
3 the victim. He ends up in the hospital, but does
4 survive. Kelvin Smith calls a friend who picks up
5 Kelvin and Ricus and takes them away from the area.
6 They end up going to Ricus's girlfriend's home and
7 change shirts and wash hands. There were officers doing
8 surveillance and an officer hiding, I don't know if it
9 was in the bushes, but hiding somewhere, observes people
10 searching the lawn outside where the shooting had
11 occurred. At some point, someone is seen picking up an
12 item from the lawn area and the people appear to this
13 officer to be rejoicing.

14 One of the people who was out there is seen
15 going inside the house. It may be the mother of Kelvin
16 and Ricus Smith. The police try to call the house, but
17 get the answering machine, even though they know this
18 person has gone into the house. Thereafter, the woman
19 exits the house and says, "they just called, you can
20 leave now." Shortly thereafter, the police make a car
21 stop from a car that leaves that home and they recover a
22 clip from underneath the passenger seat of the car that
23 is stopped.

24 There's also an incident, besides other
25 historical information, on December 13, 2006. There was

1 a car stop involving Kelvin Smith, Hampton Smith and two
2 other individuals who are not in this indictment.

3 From that car or from people involved, there
4 were cocaine powder, scales and guns that were recovered
5 during that particular incident.

6 That's a summary of the evidence.

7 Thank you, Your Honor.

8 THE COURT: Thank you.

9 Do the defendants wish to present any
10 evidence?

11 MS. SLATER: No, Judge.

12 THE COURT: If not, I'll ask the defendants
13 to stand, please.

14 How do you plead to the charges; guilty or
15 not guilty?

16 DEFENDANT HAMPTON SMITH: Guilty.

17 DEFENDANT KELVIN SMITH: Guilty, Your Honor.

18 THE COURT: It is the finding of the Court
19 in United States versus Hampton Smith and United States
20 versus Kelvin Smith that the defendant is fully
21 competent and capable of entering an informed plea; that
22 each plea of guilty is a knowing and voluntary plea
23 supported by an independent basis in fact containing
24 each of the essential elements of the offense.

25 Each plea is therefore accepted and each is

1 now adjudged guilty of that offense.

2 I will order a pre-sentence report. It is
3 in your best interests to cooperate with the probation
4 officer in furnishing information in that report because
5 the report will be important in my decision as to what
6 your sentence will be.

7 Your attorney may be present during any
8 interview if you so desire. You and your counsel have a
9 right and will have an opportunity to review the
10 pre-sentence report before the sentencing hearing. You
11 will also have an opportunity to comment on the report
12 at the time of the hearing.

13 You and your counsel will have an
14 opportunity to speak on your behalf at the hearing.

15 I'll ask Mr. Hampton Smith, would you step
16 over to the lectern for the guilty plea form?

17 (The clerk conferred with the Court).

18 Would both defendants raise your right hand
19 and be sworn?

20 (Both defendants sworn).

21 THE COURT: You both understand she's saying
22 what you've already said today, you swear is the truth;
23 right?

24 DEFENDANT HAMPTON SMITH: Yes.

25 DEFENDANT KELVIN SMITH: Yes.

1 (Guilty plea forms read and executed for
2 Hampton Smith).

3 THE CLERK: The guilty plea forms have been
4 executed, Your Honor.

5 THE COURT: Do you have a plea agreement
6 that hasn't been handed up?

7 (Said plea agreement handed to the clerk).
8 Do you have a date for sentencing?

9 (The clerk conferred with the Court).

10 THE CLERK: I have December 28th available.

11 MS. HEALEY: Right now, that's available for
12 me. Sometimes we go away.

13 THE COURT: We don't have to set it that
14 day. Why don't we leave it and if you decide to go
15 away, we'll move it.

16 MR. DORRIER: December 28th is fine with us,
17 Your Honor.

18 THE COURT: Is that all right with you?

19 MS. SLATER: That's fine. Mr. Smith is
20 anxious to leave his current facility, if there's a date
21 sooner.

22 THE COURT: That's about the minimum. If
23 you have a problem, we'll work it out.

24 MS. SLATER: I didn't hear the time though,
25 sir.

1 THE CLERK: We could do 10:00.

2 MS. SLATER: Fine.

3 THE COURT: Is there anything else?

4 MR. DORRIER: Your Honor, I just have one
5 thing I want to do on behalf of my client. My client,
6 as stated, this was his first offense and he turned
7 himself in voluntarily. His fiancée is in the courtroom.
8 I would move -- he didn't make bond, but I would move he
9 be released on his own recognizance prior to sentencing.
10 He's got a job. He can work down at McDonald's. He
11 would not be in contact with any of his co-defendants.

12 I'm making that motion on his behalf.

13 MS. HEALEY: Judge, I think the statute
14 requires he stay in at this point.

15 I will say though, his PSR may be easier to
16 do than anybody else's. He's not looking at that much
17 time under the terms of the plea agreement. If the PSR
18 gets done, I don't know if there's any way to bring him
19 in earlier. We have to oppose bond because the statute
20 requires upon conviction, he go in.

21 THE COURT: The law requires he be taken
22 into custody or be in custody. There's really nothing
23 that can be done.

24 MR. DORRIER: Thank you, Your Honor. I'm
25 just doing it for my client. I realize that.

1 THE COURT: Thank you.

2 Recess court.

3

4 "I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled
6 matter.

7

8

9 /s/ Sonia Ferris

May 21, 2009

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